

REMARKS/ARGUMENTS

Claims 1-6, 8-11, 15, 16, 18, 19, 21-52, 54-56, 58-71, 77-82, 84-86, 88-106, 108-115, 117 and 118 are pending in the application, with claims 1, 47, 77, and 98 being independent. The present Response does not add, cancel, or amend any claims. Thus, claims 1-6, 8-11, 15, 16, 18, 19 and 21 are under consideration, with claims 22-52, 54-56, 58-71, 77-82, 84-86, 88-106, 108-115, 117 and 118 being withdrawn further to the election requirement.¹

In the Office Action dated August 16, 2006, claims 1-6, 8-11, 15, 16, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,698,305 (hereinafter "SUZUKI").

Substance of the October 17 Interview

Applicants thank the Examiner for the telephone interview held on October 17, 2006, with Applicants' representative Arnold Turk regarding the Office Action. It had been Applicants' intent to request a substantive interview.

During the Interview, it was confirmed that the application had been assigned to a new Examiner. The new Examiner indicated that the current rejection did not appear to be proper, would not be maintained in its present form, and would be reviewed by the Examiner following Applicants' written response. Accordingly, the Examiner indicated that a substantive interview would not be conducted at this time as the Examiner would review the file upon receipt of the response.

¹ The Continuation Sheet of the rejection indicates that claim 57 is pending in the application. This is believed to be a typographical error, as claim 57 was canceled in the Preliminary Amendment dated November 13, 2000.

Request to Reconsider the Restriction Requirement

Applicants request that the Examiner reconsider the Restriction Requirement, and withdraw the requirement and to once again provide an examination on each of the pending claims.

For the reasons previously set forth in Applicants' Election filed June 5, 2006, Applicants submit that the requirement is without appropriate basis and should be withdrawn. For example, the restriction requirement has been made after final rejection of the claims, whereby there should not be a serious burden to examine each of the pending claims.

Thus, there would be no serious burden on the Examiner to examine all of the claims in this application. For at least this reason, and consistent with Office policy set forth in MPEP 803, Applicants respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

Response to Rejection under 35 USC § 103 (a)

Claims 1-6, 8-11, 15, 16, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUZUKI, U.S. Patent No. 5,698,305.

Applicants respectfully submit that the arguments made in the responses filed October 12, 2005 and March 20, 2006, adequately establish the patentability of all of the pending claims over SUZUKI. These responses are, therefore, expressly incorporated herein by reference. It is also respectfully submitted that the Office Actions of December 20, 2005 and of August 16, 2006, did not properly address the arguments made in Applicants' responses.

In any event, for the Examiner's convenience, certain of the arguments are made again, and are presented below.

Applicants once again note that an obviousness rejection cannot be supported by mere allegations that it would have been obvious to arrive at Applicants' invention. An Examiner's rejection must be based upon documentary evidence, and not merely official notice. In this regard, the Examiner's attention is directed to MPEP 2144.03 wherein it is noted that, "If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position." In the instant situation, Applicants respectfully submit that the rejections are improper as not utilizing documentary evidence to support the positions taken in the rejection. The rejection merely makes an assertion of obviousness, but does not support this assertion by documentary evidence. There is not the slightest documentary evidence to arrive at Applicants' disclosed and claimed invention.

Moreover, attention is once again directed to In re Ahlert and Kruger, 424 F.2d 1088, 165 USPQ 418, 420-421 (CCPA 1970), which is cited in MPEP 2144.03. In Ahlert, at 165 USPQ 421, it is stated that:

Typically, it is found necessary to take notice of facts which may be used to supplement or clarify the teaching of a reference disclosure, perhaps to justify or explain a particular inference to be drawn from the reference teaching. The facts so noticed serve to fill in the gaps which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. We know of no case in which facts judicially noticed comprised the principal evidence upon which a rejection was based or were of such importance as to constitute a new ground of rejection when combined with the other evidence previously used.

In the instant case, the rejection improperly makes an Official Notice, not to “fill in the gaps,” but to provide a complete reasoning behind modification of the primary reference. Accordingly, Applicants submit that it is improper to make such naked assertion in the instant case, and a reference must be utilized in the rejection that not only discloses Applicants’ recited concept, but also provides motivation for modifying SUZUKI to include Applicants’ recited features. This would afford Applicants an opportunity to address issues of lack of motivation for combining separate disclosures as well as an opportunity to argue against any asserted combination.

Thus, in the event that the rejections are maintained upon further review by the new Examiner reviewing this application, Applicants request that the Examiner provide documentary evidence directed to every limitation of every claim not disclosed by SUZUKI. Moreover, the rejection should clearly point out the differences between the prior art and the claimed subject matter, and indicate what modifications are being made to the prior art to arrive at Applicants’ claimed subject matter as well as the motivation in the prior art for arriving at any modification of the prior art.

Accordingly, the rejection of should be withdrawn.

CONCLUSION

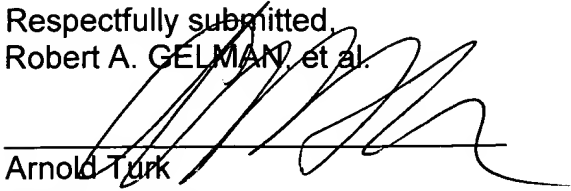
For the reasons advanced above, Applicants respectfully submit that all pending claims patentably define Applicants’ invention. Applicants request reconsideration of the Restriction Requirement and rejoining of the claims withdrawn from consideration. Allowance of the application with an early mailing date of the Notices of Allowance and Allowability is therefore respectfully requested.

P18732.A14

U.S. Application No. 09/613,425

Should there be any questions, the Examiner is invited to contact the undersigned at the below listed telephone number.

Respectfully submitted,
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